

### **REMARKS**

Applicant appreciates the Examiner's thorough consideration provided in the present application. Claims 1-12 are currently pending in the instant application. Claims 2-9, 11 and 12 have been withdrawn from further consideration by the Examiner. No claims have been amended by way of this response. However, a complete listing of the claims has been provided hereinabove for the Examiner's convenience. Claims 1-3 and 10-12 are independent. Reconsideration of the present application is earnestly solicited.

### **Withdrawal of Finality of Office Action**

As discussed in greater detail hereinafter, Applicant respectfully submits that the rejections under 35 U.S.C. § 103(a) are improper and should be withdrawn. Accordingly, the finality of the Final Office Action mailed on November 2, 2004 should be withdrawn.

If the Examiner persists in maintaining his rejections, Applicant submits that this response was not presented at an earlier date in view of the fact that Applicant is responding to a new ground of rejection set forth in a Final Office Action. Further, Applicant submits that Applicant's previously filed amendments did not necessitate the new grounds of rejection. Instead, the Examiner failed to establish a proper prima facie case of obviousness in the

Office Action mailed on February 11, 2004. Specifically, the Examiner did not provide any secondary reference that would teach or suggest the alleged modification of the original reference relied upon by the Examiner in the rejections of claims 1 and 10.

#### **Priority**

Applicant appreciates the Examiner's indication of acceptance of the certified copy of the corresponding priority document for the present application.

#### **Drawings**

Applicant appreciates the Examiner's indication of acceptance of the formal drawings filed on October 3, 2000.

#### **Election/Restriction**

The Examiner has withdrawn claims 2-9, 11 and 12 as being directed toward non-elected subject matter. Applicant reserves the right to pursue the patentably distinct subject matter of claims 2-9, 11 and 12 with a timely filed divisional(s) application(s).

**Claim Rejections Under 35 U.S.C. § 103**

Claims 1 and 10 have been rejected as being unpatentable over Ejima et al. (U.S. Patent No. 5,070,405) in view of Anderson. This rejection is respectfully traversed.

Applicant respectfully submits that the rejections based upon the alleged teachings of Ejima et al. and Anderson are improper. Accordingly, this rejection should be withdrawn.

With respect to claim 1, Applicant submits that the prior art of record fails to teach or suggest each and every limitation of the unique combination of limitations of the claimed invention, including the feature(s) of: *“an image file create device for creating an image file containing the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device, the image file create device creating the image file for each of imaging by said imaging device; and recording control device for recording the image file created by said image file create device on a recording medium.”* (Emphasis Added) Accordingly, this rejection should be withdrawn.

With respect to claim 10, Applicant submits that the prior art of record fails to teach or suggest each and every limitation of the unique combination of

limitations of the claimed invention, including the feature(s) of: “imaging a subject in an amount of exposure determined on the basis of the outputted photometry values, to obtain image data representing an image of the subject, *wherein an image file is created with an image file create device, said image file containing the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device, the image file create device creating the image file for each of imaging by said imaging device; and recording the image file created by said image file create device on a recording medium with a recording control device.*” (Emphasis Added)  
Accordingly, this rejection should be withdrawn.

Applicant submits that the references of the prior art of record relied upon by the Examiner do not teach or suggest the above-identified features of the claimed invention. Further, the Examiner’s rejection under 35 U.S.C. § 103(a) is improper and fails to establish a prima facie case of obviousness. Accordingly, this rejection should be withdrawn.

In the claimed invention, the image file containing the image data and the data representing the photometry values is created by the image file create device. The created image file is recorded on the recording medium. Therefore, the image file, containing as a unit the image data and the data representing

the photometry values, is recorded on the recording medium, and the image data and the data representing the photometry values are read from the recording medium as a unit.

As discussed in the background of the invention of the present application (pages 1-3 of the specification), the present invention provides the unique feature of an image file create device for creating an image file containing the image data outputted from the imaging device and data representing the photometry values for each of the sections outputted from the photometry device, the image file create device creating the image file for each imaging by the imaging device. Accordingly, if an image is cut-out to create a partial image, the partial image that was typically of poor image quality, e.g., either too dark or too bright, is now improved in quality because the photometry values for each of the *individual sections* of the photometry device is preserved in the image file. Applicant submits that the Ejima et al. and/or Anderson references do not teach or suggest this unique aspect of the claimed invention.

The Examiner has admitted that Ejima et al. does not teach or suggest an image file create device for creating an image file containing the image data outputted from the imaging device and data representing the photometry values for each of the sections outputted from the photometry device and the

recording device (see Final Office Action, page 2, paragraph 2). The Examiner has alleged that Anderson teaches that it would be obvious to modify Ejima et al.'s camera to include this feature. Applicant respectfully disagrees with the Examiner's position as the Anderson patent fails to teach the missing features and/or does not provide a motivation to include the missing features in the Ejima et al. patent as alleged by the Examiner.

The Examiner has indicated that Anderson teaches a recording medium (figure 4c, element 417) having an image data recording field (figure 4c, element 419) for recording image data and a miscellaneous data field (figure 4c, element 425) for recording exposure values in an image file wherein the combination of 419 and 425 are read as an image file. Although elements 419 and 425 may appear to be part of the same volatile memory data (410, 417), element 425 does not teach or suggest data representing *photometry values* for each of the sections outputted from the photometry device and the recording device. As described by Anderson at col. 7, lines 22-35, the data field 425 is "a miscellaneous data field 425 for storing the exposure and focus settings, time and date, statistical data, and the presence of any defective image sensor 304 pixels, rows or columns." However, Anderson does not provide any teaching of the *storage of photometry values* for each of the sections outputted from a photometry device. Similarly, Anderson does not appear to teach or suggest

any device that is analogous to the photometry device of the claimed invention. Applicant respectfully submits that Anderson cannot reasonably be interpreted to teach or suggest storing photometry values for each of the sections from the photometry device along with the image data if this reference does not even have a photometry device. Therefore, Anderson cannot reasonably be considered to teach a motivation to add features to the Ejima et al. device that the Anderson reference itself does not teach.

Even if Ejima et al. were modified with the Anderson reference as alleged by the Examiner, the resulting combination would still not include an image file create device for creating an image file containing the image data outputted from the imaging device and data representing the photometry values for each of the sections outputted from the photometry device and the recording device. Accordingly, Applicant submits that the rejection should be withdrawn as the Examiner has failed to establish a proper prima facie case of obviousness.

### **CONCLUSION**

Since the remaining references cited by the Examiner have not been utilized to reject the claims, but merely to show the state-of-the-art, no further comments are deemed necessary with respect thereto.

All the stated grounds of rejection have been properly traversed and/or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently pending rejections and that they be withdrawn.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

Applicant respectfully petitions under the provisions of 37 C.F.R. § 1.136(a) and § 1.17 for a one-month extension of time in which to respond to the Examiner's Office Action. The Extension of Time Fee in the amount of **\$120.00** is attached hereto.


In the event there are any matters remaining in this application, the Examiner is invited to contact Matthew T. Shanley, Registration No. 43,368 at (703) 205-8000 in the Washington, D.C. area.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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